IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 374 of 2001

to

FIRST APPEAL No 400 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

STATE OF GUJARAT

Versus

ZHAVERBHAI KHUSHALBHAI PATEL

---

Appearance:
MR UMESH TRIVEDI, ld.AGP for appelants
MR AJ PATEL for Respondents

---

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE J.R.VORA

Date of decision: 23/01/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

All these 27 First Appeals under Sec.54 of the Land Acquisition Act read with Sec.96 of the Code of Civil Procedure are directed against the judgment and order dated 14th Dec.1999 passed by the 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural), Mirzapur in Land Acquisition Cases Nos.353 to 362 of 1996 and 435 to 451 of 1996.

2. The lands of village Sadatpura, Taluka Viramgam, Dist. Ahmedabad were sought to be acquired for the purpose of construction of Kharakhoda Branch Canal. For this purpose, the notification under Sec.4 of the Land Acquisition Act was issued on 23rd Oct.1992 and 19th Nov.1992. Thereafter the notification under Sec.6 was issued on 10th June 1993 and 16th July 1993. The Land Acquisition Officer passed the award on 17th Aug.1995 and determined the rate at Rs.1.20 per sq.mtr. for the purpose of payment of compensation to the land owners. The matter was taken to the Reference Court by the claimants and the District Court determined the rate of Rs.13/- per sq.mtr. over and above the rate as was fixed by the Land Acquisition Officer making the rate of compensation at Rs.14.20 per sq.mtr. Before the Reference Court, the written statement at Exh.10 was filed by the Land Acquisition Officer denying the claim of the land owners i.e. Rs.20/- per sq.mtr. The Written Statement at Exh.12 was also filed by the concerned Executive Engineer, Narmada Project, Division No.4/4, Mehsana. The Reference Court also considered the copies of Village Form No.7/12 at Exh.26 and the previous judgment at Exh.27 in Land Acquisition Case No.704 of 1986 pertaining to the same village, i.e. Sadatpura was also relied upon in which the compensation was determined at Rs.5/- per sq.mtr. while the notification under Sec.4 in that case had been issued on 9th July 1981. The deposition of one Shankerbhai Kacharabhai Patel at Exh.28 was also taken into consideration by the Reference Court.

3. On behalf of the present appellants, the only argument which has been raised before us against the impugned judgment and award dated 14th Dec.1999 is that the previous judgment which has been relied upon by the Reference Court is stale order inasmuch as it was passed on 8th Feb.1989 while the date of notification under Sec.4 was 9th July 1981. Mr.Umesh Trivedi, ld.AGP has argued that in the present case, the date of notification

under Sec.4 is 1992 and there is a difference of 11 years. His contention is that 10% increase per year even at flat rate cannot be granted by taking judicial notice with regard to the increase in the market value unless cogtent evidence is adduced by the claimants that there was an increasing trend in the market rates. Whether judicial notice is taken or not it is a fact which has to be agreed on all hands, rather the same is undeniable that increase in the market value is there and in large number of cases, this Court as well as the Apex Court has granted increase of rate by 10% per year when the market value with regard to the same land in village had to be assessed at Rs.5/- per sq.mtr. with reference to the year 1981 after 11 years even at flat rate, the increase in market value comes to Rs.10.50 per sq.mtr. and if we take into consideration the cumulative increase i.e. 10% rate after every year, the market rate would go much more than Rs.13/- per sq.mtr. in the instant case starting from Rs.5/- per sq.mtr. in the year 1981. The argument that the previous award in the case of Land Acquisition Case No.704 of 1986 of the same village is a stale order is, in our opinion, an argument in despair merely because the order was passed with regard to the notification under Sec.4 issued on 9th July 1981 and such order was passed in the year 1989, this is no ground to say that it cannot be made applicable with regard to the village for the purpose of determining the market value in the year 1982. Thus, the only contention which has been raised on behalf of the appellants before us while assailing the impugned order is not at all sustainable and the same is hereby rejected. We have already taken this view in an earlier decision in First Appeals Nos. 1842 to 1851 of 2000 decided on 18.1.2001 and in the case of Dy.G.M., O.N.G.C. v. Chaturji Lalaji and ors. reported in 1998 (1) GLR p.130. It is expected that the appellants will pay the necessary amount of compensation within a period of three months from the date the certified copy of this order is produced before the authorities concerned. There is no merit in any of these First Appeals. All these 27 First Appeals are hereby dismissed, with no order as to costs.

(M.R. Calla, J.)

(J.R. Vora, J.)

Sreeram.